

that the Borrower will indemnify and hold harmless the government and any officers, agents or employees of the government from any and all liability, including costs, fees, and settlements arising out of, or in any way connected with the payment of the Consultant's fee pursuant to the Consultant Contract. The Indemnification Agreement may recognize, as a condition of liability thereunder, the rights of the borrower to prompt notice, to use of counsel of its own choosing, and to participation in any settlement of a claim against which indemnification is sought.

§ 1789.163 Waiver.

RUS may waive any requirement or procedure of this subpart by determining that its application in a particular situation would not be in the government's interest, except that certain provision that the subject contracts are subject to the provisions of the FAR (48 CFR ch. 1) and AGAR (48 CFR ch. 4).

§§ 1789.164–1789.165 [Reserved]

Subpart B—Escrow Account Funding and Payments

§ 1789.166 Terms and conditions of funding agreement.

Funding Agreements between the Borrower and a Consultant shall be in form and substance satisfactory to RUS and provide for, among other matters, the following:

- (a) Specific reference by number to the applicable Consulting Contract entered into between the government and the Consultant;
- (b) Specific reference by number to the applicable Task Order (where applicable);
- (c) A brief description of the Application;
- (d) A requirement that Invoices make specific reference to:
 - (1) The applicable contract and Task Order(s); and
 - (2) The Escrow Account from which payment is to be made;
- (e) A requirement that the Final Invoice for a Task Order be clearly identified as such;

(f) A description of the services to be provided by the Consultant to RUS and the applicable time frames for the provision of such services;

(g) Agreement that the Borrower shall pay for the Consultant services provided to RUS under the applicable contract through an Escrow Account established pursuant to an Escrow Agreement, the Consultant shall not provide services to RUS under the applicable contract unless there are sufficient funds in the Escrow Account to pay for such services, the Consultant shall seek compensation for services provided under the applicable contract from, and only from, funds made available through the Escrow Account, and the Consultant must submit all Invoices to the government for approval.

(h) A form of Escrow Agreement satisfactory to the Borrower, Consultant and the designated Third-party Commercial Institution;

(i) A schedule setting forth when and in what amounts the Borrower shall fund the Escrow Account;

(j) Acknowledgment by the Consultant of the Indemnification Agreement provided by the Borrower to the government; and

(k) The Funding Agreement shall not be effective unless and until approved in writing by RUS.

§ 1789.167 Terms and conditions of escrow agreement.

Escrow Agreements between and among the Borrower, Consultant and Third-party Commercial Institution shall be in form and substance satisfactory to RUS and provide for, among other matters, the following:

- (a) Specific reference by number to the applicable contract for services;
- (b) Specific reference by number to the applicable Task Order;
- (c) Specific reference by number to the Escrow Account into which funds are to be deposited;
- (d) Invoices to specifically identify the applicable contract and Task Order(s);
- (e) Funds to be held in the Escrow Account by the escrow agent until paid to the Consultant pursuant to the government's authorization;
- (f) The Escrow Account to be closed and all remaining funds remitted to